IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1076 OF 2007
IN
CRIMINAL APPEAL NO.879 OF 2007

Shri.Uttam Bhimrao Kamble ..Applicant

Vs.

The State of Maharashtra ..Respondent

Mr.P.B.Naiknaware for the Applicant.
Dr.F.R.Shaikh, Addl.P.P. for the Respondent.

CORAM :- DR.S.RADHAKRISHNAN &
S.C.DHARMADHIKARI,JJ.

DATE : 12TH OCTOBER,2007.

P.C.

1. Heard the learned Counsel for the parties.

The Applicant is seeking bail with regard to the conviction for the offence punishable under Section 302 of the Indian Penal Code. The case of the Prosecution is that the Applicant found his brother's wife sleeping with some one else on the field and as a result he had assaulted with a stick over the head of the person and killed him. The Prosecution has alleged that there were five eye witnesses but all of them are turned hostile. Even the recovery was not established by the Prosecution. The learned Judge has observed in paragraph No.27 of the judgment as under:

> 27. It was argued on behalf of the accused by learned Counsel Mr.Hajare that as the

ocular witnesses are not supporting the prosecution case and as the witnesses to the discovery and seizure of the muddemal property i.e. stick and clothes of the accused and other articles has also not supported the prosecution, then in such circumstances, no case is made out against the accused. On the other hand, the learned Prosecutor Mr.V.K.Patil argued that the ocular witnesses and other witnesses regarding discovery and seizure of muddemal property have not supported the prosecution, but still the fact remains that circumstantial evidence on record is such that it points towards the guilt of the accused only, in respect of murder of the deceased. Though all the ocular witnesses resiled from their statements, but the omissions and contradictions appearing in their evidence were got proved from the Investigation Officer. It is not always necessary that the prosecution must prove the discovery and seizure of weapons used in the offence and merely because such facts are not proved by the prosecution, it cannot be said that the offence as such has not at all taken place."

2. Under the aforesaid facts and circumstances of the case, we are inclined to grant bail in the above. The Applicant shall be released on bail in the sum of Rs.10,000/- and the Applicant shall furnish two sureties of like amount in addition to the same. The Applicant shall furnish the same before the learned Trial Court and shall report the concerned Police Station on the first Monday of every month till the disposal of the above Appeal. Bail Application stands disposed of accordingly.

(S.C.DHARMADHIKARI,J.) **(DR.S.RADHAKRISHNAN,J.)**